

Risk Regulation and Management Against Illegal Wildlife Trade: Europe and America

Olonyi Bosire

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RISK REGULATION AND MANAGEMENT AGAINST ILLEGAL WILDLIFE TRADE: EUROPE AND AMERICA

by Olonyi Bosire

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LIST OF ACRONYMS

CITES	Convention on International Trade in Endangered Species
CJEU	Court of Justice of the European Union
ESA	Endangered Species Act
EU	European Union
GEF	Global Environment Facility
IWT	Illegal Wildlife Trade
NMFS	National Marine Fisheries Service
REIO	Regional Economic Integration Organizations
US	United States of America
UK	United Kingdom

I. INTRODUCTION

The source or initial crime in the illegal wildlife trade chain is mostly committed beyond the shores of North America and Europe. However, the two regions continue to be massive destination markets and key transit hubs for illegal wildlife products. Illegal trade networks are shadowy and therefore problematic to study. This helps explain the wide valuation of illegal wildlife trade currently estimated by the Global Environment Facility (“GEF”) as ranging between 7 and 23 billion dollars per annum.¹

Policies and strategies to pre-empt or respond to illegal wildlife trade keep evolving as appreciation grows for the previously underestimated complexities, patterns and nuances of illegal wildlife trade (“IWT”). For instance, there now exists a broad consensus that illegal wildlife trade is a transnational organised crime and appropriate corresponding resources and efforts must be mustered to eliminate it. With that in mind, a declaration calling for dealing with illegal trade in wildlife as a serious transnational organized crime was signed by eighty countries during the 2018

London Conference on Illegal Wildlife Trade.² The United Nations has recognised as much and stated that IWT is a sophisticated transnational form of crime, comparable to other pernicious crimes such as trafficking of drugs, humans, counterfeit items, and oil.³ A crime is transnational if it is planned, executed, or has effects across national borders.⁴ The United Nations Convention Against Transnational Organized Crime sets out the element of transnationality⁵ as where the offence is:

- (i) Committed in more than one state;
- (ii) committed in one state but a substantial part of its preparation, planning, direction or control takes place in another state; is
- (iii) committed in one state but involves an organized criminal group⁶ that engages in criminal activities in more than one state;
- (iv) or is committed in one state but has substantial effects in another state.

The above declarations and legal provisions are an acknowledgement of the complexity of the IWT menace and help lay out the foundation for extensive international cooperation. Over the past couple of years, a number of IWT transnational criminal networks have been dismantled and suspects apprehended, while more remain wanted. One such network was the “Rathkeale Rovers,” a transnational Irish criminal gang that raided auction houses, art galleries, antique dealers, museums, private collections, and zoos for their rhino horns.⁷ The gang would later sell the horns to international auction houses in the UK, France, US, and China.⁸ The group also engaged in drug trafficking, tarmac fraud, distribution of counterfeit products, and money laundering across the European Union.

In East Africa, one of the largest source regions for illegal wildlife trophies, three major IWT networks have been dismantled in the past four years. They include a drug trafficking network in Kenya run by the notorious Akasha brothers⁹ who are also suspected of indulging in ivory trafficking¹⁰ and a Ugandan

network that trafficked both drugs and ivory, masterminded by Moazu Kromah, a Liberian national.¹¹ It took the intervention of the US Drug Enforcement Administration and U.S. Fish and Wildlife Service special agents working with the respective local policing authorities to investigate, arrest and extradite the criminals behind the networks.¹² One of the Akasha brothers, Bakhtash Akasha, was sentenced to twenty-five years¹³ in prison in August 2019 by the District Court for the Southern District of New York while his brother, Ibrahim Akasha, was sentenced to twenty-three years behind bars in January 2020.¹⁴ Moazu Kromah was extradited to the US and charged in June 2019 with drug, money laundering, and wildlife trafficking offences¹⁵ and another member of this network, Mansur Mohamed Surur was arrested by Kenyan authorities in June 2020 and extradited to the US in July 2021 to face similar charges.¹⁶ In neighbouring Tanzania, a Chinese woman nicknamed the ‘Ivory Queen’ was sentenced to fifteen years in jail after being convicted of trafficking approximately 860 elephant tusks worth \$5.6 million dollars to Asia between 2000 and 2014.¹⁷ The above incidences demonstrate the ever-changing characteristics of transnational organised IWT and the existence of organized criminal gangs that traffic illegal substances interchangeably, be they drugs or wildlife trophies, along established routes.

Despite such high-profile arrests and the tangible effects they have at disrupting criminal networks, it appears that only a small fraction of IWT is being detected and prosecuted judging from the continued growth of the illicit trade. To the chagrin of most nature enthusiasts, international law is not geared towards a blanket prohibition of wildlife trade but mostly seeks to ensure that such trade is undertaken in a sustainable manner. The North Pacific Fur Seal Convention of 1911, which is arguably the earliest wildlife related treaty, illustrates this trait that has endured to date. The US, UK, Japan, and Russia signed the treaty that only limited the hunting of fur seals around the Pribilof Islands with the right to manage any onshore hunting granted to the US.¹⁸ One of the main conservation methods of another convention, the 1933 Convention relative to the Preservation of Fauna and Flora in their Natural State, was to regulate the hunting and collection of species.¹⁹ The commodification of wildlife has many times unduly influenced genuine conservation efforts.

While it is clear that individual EU Member States provide considerable financial support to programmes against wildlife trafficking, this paper mainly examines the regulation approach of the EU as a body, block, or union towards IWT and not its individual members. A comparison is then made to the regulatory approach taken by the US. Part II of the paper takes a brief look at the history of international wildlife trade so as to highlight such trade as a historical problem that has worsened over time, and demonstrates the historical evolution of exchange of wildlife species between peoples which later evolved into trade. Part III examines the indirect and direct risks that come with unregulated trade in wild species while Part IV looks at the regulations in place to fight IWT consequently promoting conservation of endangered species. Part V compares the sanctions in place in the EU and US that are used to punish or deter

offenders while Part VI has a brief mention of recommendations that can improve the fight against IWT.

II. BRIEF HISTORY ON WILDLIFE TRADE

Human imagination has always been fascinated by wild life-forms like reptiles, plants, fish, cats, and other mammals. The Sung dynasty (960 -1279) from China is one of the earliest known civilisations to keep wild fish strictly for aesthetic value.²⁰ The active keeping of species for aesthetic value evolved into exchange and later trade of species as civilisations began exploring distant lands for trade and conquest.

Trade in wild predator birds, such as hawks and falcons, was slowly taking shape nearly a thousand years ago to the extent that Norway's oldest known laws from the 12th century related to the regulation of hawks as a form of property.²¹ A 13th century Norwegian book titled *Kongsspegelen* ("The King's Mirror") that was used for grooming young princess during the reign of Norwegian King Hakon Hakonsson contains a quotation of a King telling his son, "*there are plenty of falcons that people of foreign countries would value highly. The falcons are white and there are more of them on Greenland, than] anywhere else, but the people there cannot make any use of them.*"²² King Hakon Hakonsson, following the book's advice, trapped and gave falcons to the English King in 1224 in efforts to secure political alliances.²³

Exotic wild animal bones have occasionally been found in English archaeological sites of medieval and early modern periods. For instance, fossils of barbary macaque apes (*Macaca*

sylvanus) which are indigenous to Northwest Africa were recovered from a site dated AD 1300 in Southampton²⁴ and from medieval/post-medieval deposits in London.²⁵ A South American capuchin monkey (*Cebus nigrivittatus*) was excavated from a 17th-century site in London.²⁶ Archaeologists have stated that since the bones of the exotic species were mostly unearthed in the port cities of London and Southampton, it can be concluded that they were brought by sea into England, whether alive or dead.²⁷ Existence of the exotic bones also supports the inference that there was some form of commercial activities with regard to wild animals. It was also common for royal families to gift each other exotic beasts which were kept in their private menageries.²⁸ One historian narrates that, "King Henry the first . . . [e]nclosed the [p]ark [at Wudestoc] . . . though not for [d]eer, but [for] all foreign wild [b]easts, such as [l]ions, [l]eopards, [c]amels, [and] [l]ynxes, which he procured abroad of other Princes."²⁹

In France, King Louis XIV is chronicled to have built a new menagerie designed to depict a "metaphorical expression of His Majesty's absolutism and aristocratic civilite"³⁰ Frederick II, the Holy Roman Emperor gifted King Henry III of England three leopards in 1235 while the King of Norway gave him a white bear in 1251 which was sometimes allowed to swim in the Thames and four years later King Louis IX of France gifted him an African elephant.³¹ More exotic wild animals were shipped to various parts of Europe into public menageries that began cropping up in major European cities. The supply of animals to the menageries was sustained by a range of suppliers

such as sailors, explorers, and big game hunters. A public menagerie known as Exeter Change in England hosted many exotic animals including a famous elephant named Chune, a star attraction that met a tragic end in 1826.³² Animals were kept in appalling conditions, confined in cages, fed unsuitable diets, including alcohol, while some were used in bait-fight spectacles.³³ Other European cities also had their own menageries, like the Baroque menagerie in Schönbrunn Palace near Vienna, the Buen Retiro Palace grounds menagerie in Madrid³⁴ and there were more in Aachen, Nijmegen and Ingelheim.³⁵ Across the Atlantic, exotic animals were introduced in North America by sea merchants who purchased them for pets from distant ports. In 1796 an elephant calf was shipped in and later tiger cubs from Seurat in India.³⁶ Gradually the wild animals began to be exhibited in travelling menageries and between 1813–1834 an estimated forty-one menageries were in business. During the war of 1812 an American warship, the U.S.S. Constitution, seized a British frigate that had two jaguars belonging to the British Prince Regent. The beasts later resurfaced in an exotic animal's exhibition in Baltimore.³⁷

III. RISKS ASSOCIATED WITH ILLEGAL WILDLIFE TRADE

In general, both legal and illegal wildlife trade pose risks to humans and their environment because they may both involve movement of species from native to non-native areas. Nevertheless, the risks associated with IWT are more substantial. They extend well beyond the direct impacts that are easily perceptible, identifiable, or quantifiable. Some of the risks include loss of biodiversity, public health risks, loss of livelihoods, invasive species, organized crime and transnational crime, and indirect risks.

A. LOSS OF BIODIVERSITY

IWT involves illicit and unsustainable taking of wildlife species, both plants and animals, from their habitat. The outcome of such takings is a degraded environment, an unbalanced ecosystem, as well as accelerated extinction of endangered species. Over exploitation of species to meet black market demand through activities like poaching is evidenced by the extinction of populations like the Baiji or Yangtze River dolphin, Pyrenean ibex, Spix's macaw, Western black rhinoceros and the Northern white rhino, of which there are only two known female individuals remaining under armed guard in Kenya.³⁸

The wanton harvesting of wild species also distorts critical ecological processes like nutrient flow, pollination, and animal seed dispersal. Trade of illegally and unsustainably logged timber contributes to deforestation, desertification, and to loss of biodiversity of species that dwell in forest habitats like insects, birds and primates. Coral poaching which involves illegal harvesting of live corals or coral reefs and illegal harvesting of coral reef organisms for aquariums, jewellery, curio, and home décor industries also accelerate the destruction of coral reef biodiversity.³⁹ Illegal wildlife harvesting also usually results in collateral kills or incidental killing of non-target species in instances when

poisons, snares, and other crude traps are intended for one species but end up killing different animals. For example, the population of the vaquita porpoise fell by an estimated 80% between 2011 and 2015 on account of bycatch in nets that were intended to illegally catch an endangered fish known as totoaba.⁴⁰

B. PUBLIC HEALTH RISK

Analyses of the threats posed by infectious diseases suggests that infectious disease outbreaks are increasing in both frequency and geographical range. Infectious diseases have claimed human lives and exerted a heavy public health and economic burden to the global community.⁴¹ Nearly

60% of infectious diseases are classified as zoonotic diseases, that is, infectious diseases that are naturally transmitted from animals to humans and vice versa.⁴² Animals are known to carry various pathogenic agents like bacteria, parasites, fungi, viruses, and prions that can cause different types of illnesses in humans and animals.⁴³

While it's a truism that the majority of zoonotic infectious diseases like anthrax, yellow fever, and influenza arise from domestic animals, wild animals as a transmission mechanism are of a growing concern. Seventy percent of all emerging zoonotic infections, newly recognised or newly evolved, originate from wildlife species.⁴⁴ This is especially so as humans interact more closely with wild animals by encroaching into habitats, capturing, transporting, and trading in them. There has been a rise in outbreaks of zoonotic infectious diseases like Ebola, Chikungunya virus, Hendra virus, Severe Acute Respiratory Syndrome ("SARS"), and coronavirus ("COVID-19") all of which originate from wild animal species. Effects of such outbreaks can be extremely widespread, as the global COVID-19 pandemic has shown. Coronavirus is suspected to have jumped to humans from a wild animal species intermediary⁴⁵ leaving a trail of death, suffering, disruptions, and economic ruin. As of May 18, 2021, the death toll from Covid-19 stood at the unprecedented figure of 3,398,864 persons,⁴⁶ economic sectors like tourism and hospitality have collapsed while thousands of small businesses have closed down. The extent of long-term impacts of the pandemic are unclear and yet to be weathered by the global economy.⁴⁷

The SARS outbreak in 2003 triggered an enormous dip in China's international tourism revenue by about fifty to sixty percent or 10.8 billion US dollars as compared with the tourism revenue of the previous year.⁴⁸ In 2003, a monkeypox virus previously found only in Africa jumped from native prairie dogs and infected thirty-seven humans in the US.⁴⁹ The virus was traced to rodents shipped from Ghana by a pet dealer. The rodents, which included squirrels, infected native prairie dogs which then carried the infection to five states before health officials managed to contain the outbreak.⁵⁰

C. LOSS OF LIVELIHOODS

Illegal trade in wildlife and related products may initially have a short-term monetary benefit to communities living in wildlife rich areas but in the long term, it surely proves to

be detrimental as wildlife populations dwindle and as a result the environment degrades due to unsustainable harvests.⁵¹ For instance, unsustainable harvesting of endangered wild plant species may affect soil stabilization, protection from natural hazards like excessive winds and water redistribution within the environment a community resides in.⁵² Poor soils and dwindling or poor-quality water eventually affect the livelihood of communities that depend on those natural resources. Decimation of charismatic species like elephants or lions directly impacts tourism which is an income earner for members of local communities. A reduction in tourism then directly affects tourism-based development options that would otherwise be available to communities living in wildlife rich areas. The illicit harvest and trade can additionally be used to finance conflict as armed groups or gangs participate and pose a security threat to local populations. The Janjaweed militia of Darfur and the Lord's resistance army have been known to engage in ivory trade poached from Garamba national park in the Democratic Republic of Congo.⁵³ Such armed groups always trigger a militarized response from governments seeking to restore order.

D. INVASIVE SPECIES

Some species are only available in the black market because they are banned or declared illegal for the precise reason that they are overly aggressive alien species in the event that they escape into a new non-native environment. IWT inevitably leads to the accidental or deliberate introduction of alien species into areas where they were not naturally present, and which are outside of their natural geographic range. Invasive plant species may cause significant damage to their novel environment by altering soil composition⁵⁴ and competing with or preying on native species⁵⁵ often leading to extinction of some native species. An absence of a natural predator of the alien species in the new environment can alter the food chain, aiding in rapid reproduction and colonisation of an area.⁵⁶

A disconcerting example of the havoc an invasive species may wreak on a habitat is the Burmese python, a species native to South East Asia which established a breeding population in Everglades National Park in Florida. Within the Florida ecosystem, the Burmese python is an apex predator since it has no natural predator in south Florida.⁵⁷ Consequently, a drastic decline in mammal populations has been recorded in some parts of the Everglades with raccoon populations dropping by 99.3%, opossums 98.9%, and bobcats 87.5% since 1997.⁵⁸ Marsh rabbits, cottontail rabbits, and foxes are also reported to have disappeared.⁵⁹ In Europe, the American mink is an invasive species that appears to be out competing the European mink which is now listed as endangered on the IUCN Red List of Threatened Species. Water hyacinth is a species native to the amazon forest and has been the bane of water bodies of the tropics and subtropics. The species has spread to over fifty countries⁶⁰, and in East Africa the weed has taken over fish landing areas, docks and suffocated aquatic life in the ones it has taken over.⁶¹ Relevant risk management strategies are therefore crucial in preventing outbreaks and spreading of invasive species because controlling

or eradicating invasive species is costly, resource intensive and often unsuccessful once the species is widespread.

E. ORGANIZED CRIME AND TRANSNATIONAL CRIME

An overlap exists between illegal wildlife trade and criminal networks involved in illegal trade in drugs, weapons, and other illicit goods. The actual poachers in most cases are disposable foot soldiers who are paid small amounts to carry out the initial crime and pass the wildlife trophies or live animals to criminal networks. The criminal networks possess flexible distribution channels composed of middlemen, wholesalers, trophy processors, exporters, and importers. The convergence of such transboundary criminal networks to move other illicit products like drugs or counterfeit products is a threat to the rule of law especially since the same routes used to smuggle wildlife across countries and continents are often used to smuggle weapons, drugs, and people.

F. INDIRECT RISKS

Institutional weakness and state erosion always occur at varying levels where illegal activities like IWT are rampant. Illicit activities like passport fraud, corruption, and money laundering (all which enable all sorts of unlawful activities) erode the legitimacy and integrity of institutions in a nation. They are also a threat to good governance.⁶² IWT also undermines the legal trade in wildlife products under the Convention on International Trade in Endangered Species (CITES) as well as depriving governments of revenues and taxes. IWT delays the development of legitimate businesses such as tourism especially when habitats are destroyed or species overexploited.⁶³ IWT is also a challenge to our stewardship responsibilities to conserve the environment for intergenerational and intragenerational enjoyment and for fostering an earth stewardship culture among the youth and future generations.

IV. REGULATORY RESPONSES AGAINST ILLEGAL WILDLIFE TRADE

A. EU REGULATIONS AGAINST ILLEGAL WILDLIFE TRADE

The primacy of European law over all national laws of member states is binding and was confirmed by the Court of Justice of the European Union (“CJEU”) in the *Flaminio Costa v ENEL* case.⁶⁴ The CJEU held that, “*The transfer by the states from their domestic legal system to the Community legal system of the rights and obligations arising under the Treaty carried with it a permanent limitation of their sovereign rights, against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.*”⁶⁵ EU regulations and directives are sources of law and binding to all member states. Once passed, regulations apply automatically and uniformly to all EU countries without need to be transposed into member state national laws. Directives require EU countries to achieve a particular result without dictating the methods of achieving that result. Member states then adopt measures to incorporate them into national law so as to achieve the objectives set by the directive.

The Habitats Directive⁶⁶ and Birds Directive⁶⁷ are the core European nature conservation laws. The Habitats Directive envisions Member States as keepers of the common European nature heritage with an obligation to ensure the survival of Europe’s most endangered and vulnerable species. Member States are obliged to pass measures to maintain or achieve the ‘favourable conservation status’ of species and habitats.⁶⁸ The Habitats Directive also establishes an ecological network of special areas of conservation referred to as Natura 2000.⁶⁹ The Birds Directive is aimed towards the protection of all wild birds in the EU including their eggs, nests, and habitats while prohibiting killing, capture, or trade of birds. The habitats and rare species listed in the two directives form the Natura 2000 network. The two legal instruments that regulate wildlife trade are the Council Regulation (EC) No 338/97, which also implements the Convention on International Trade in Endangered Species (“CITES”), and Commission Regulation (EC) No. 865/2006, which operationalizes regulation (EC) No 338/97 by expounding on the rules concerning wildlife trade.

The two regulations on wildlife trade set out more stringent trade restrictions in some cases than those established by CITES. For instance, the EU region is able to prohibit imports of species from specific countries despite such imports being permissible under CITES. EU wildlife trade regulations categorize species into four annexes, A through D, where annexes A through C generally corresponds to CITES appendices I-III. Annex D contains a list of species being monitored to allow early detection in case of any conservation concerns.⁷⁰

Annex A is equivalent to CITES appendix I, and species listed therein receive the highest levels of protection similar to those listed under CITES appendix I. Both internal and external trade in any EU annex A or CITES appendix I species is only permitted in extremely rare circumstances like scientific research. The EU Annex A also includes some species that are listed under CITES Appendix II and consequently receive more robust protection in the EU and cannot be traded for commercial purposes.⁷¹ A few species not listed in any of the CITES appendices are included in the EU annexes, like the Ethiopian wolf (*Canis simensis*) which is listed under Annex A of the EU Wildlife Trade Regulations.⁷² The Ethiopian Wolf is also listed as endangered under the IUCN Red list⁷³ but is disappointingly not listed in any of the CITES Appendices. Under Ethiopia’s Wildlife Conservation Regulations, the Ethiopian wolf is protected and the unlawful killing of a wolf is prohibited.⁷⁴

The Iriomote cat (*Prionailurus iriomotensis*) is listed under Annex A of the EU wildlife trade regulations but not listed in any of the CITES Convention Appendices. The giant slippery frog (*Conraua goliath*) is listed under Annex B⁷⁵ of EU Wildlife Trade Regulations, as an endangered species in the IUCN Red List⁷⁶ but is not listed under any of the CITES appendices. Other species that are listed under annex A of the EU Wildlife Trade Regulations but are listed under CITES appendix II which offers less stringent protection than CITES appendix I include:

- Livingstone's flying fox (*Pteropus livingstonii*)
- Kiang (*Equus kiang*)
- Rodrigues flying fox (*Pteropus rodricensis*)
- Sun-tailed monkey (*Cercopithecus solatus*)

The EU joined CITES in 2015 as a Regional Economic Integration Organizations ("REIO") and now casts its 28 votes as a block as opposed to the previous voting as singular EU CITES members. The REIO voting model was demonstrated when the EU, after a last-minute change of heart, voted in favour of Resolution Conf. 11.20 (Rev. CoP18)⁷⁷ that upheld a ban on the sale of wild caught elephants from Africa to overseas zoos.⁷⁸ This occurred at the 18th CITES Conference of Parties (CoP 18) held in Geneva, Switzerland in August 2019 where the US took a contrary position and voted against the resolution.⁷⁹

The CITES convention Secretariat has classified all EU member states in Category 1 indicating that the EU member states have legislation that is believed generally to meet the requirements for implementation of CITES.⁸⁰ The European Commission adopted an EU Action Plan against wildlife trafficking to be implemented between 2016 and 2020. The plan outlines enforcement and cooperation strategies to combat wildlife crime, including partnership with countries affected by wildlife crime whether as source, transit, or consumer countries.⁸¹

Other ongoing EU programmes that directly or indirectly support the fight against illegal wildlife trade include the LIFE programme, which is the EU's financial instrument supporting environmental, nature conservation, and climate action projects throughout the EU,⁸² and the EU-TWIX, which is a European enforcement support system designed to facilitate information exchange and international cooperation between CITES management authorities, wildlife law enforcement, and wildlife management officials.⁸³

The EU launched a law enforcement initiative for combating wildlife and forest crime in 2017. The initiative is aimed at augmenting the operational capacities of the International Consortium for Combating Wildlife Crime ("ICWC") and improving wildlife and forest law enforcement in targeted countries. The International Consortium for Combating Wildlife Crime (ICWC) includes Interpol, the CITES Secretariat, the UN Office of Drugs and Crime, the World Bank, and the World Customs Organisation.⁸⁴ The Monitoring the Illegal Killing of Elephants (MIKE) Programme, which was expanded to include the Minimising the Illegal Killing of Elephants and other Endangered Species (MIKES) project, is mainly funded by the EU. MIKES supports local communities and civil society in their efforts to prevent and combat wildlife trafficking.⁸⁵ The EU is also engaged in international efforts against illegal logging through the Forest Law Enforcement, Governance and Trade ("FLEGT") process⁸⁶ and against illegal fishing.⁸⁷

Trade in captive-bred species or specimens listed under Appendix 1 of CITES and Annex A of EU regulations is permitted, albeit with restrictions. Species listed in Annex A that were born and bred in captivity are treated as specimens of species listed in Annex B,⁸⁸ while those in CITES Appendix 1 are listed in Appendix II.⁸⁹ The rationale behind this exception allowing

trade in highly protected species is that captive breeding reduces pressure on wild populations. However, captive breeding is detrimental when conducted unethically or unsustainably where sourcing is done from wild populations that are subsequently laundered as captive bred. Various instances of wild species being disguised and laundered as captive bred have been reported, highlighting the difficulty enforcement officers face in distinguishing between the two sources.⁹⁰ Authorised captive breeding operations in Europe that are registered under CITES are located in the UK, Germany, Czech Republic, Denmark, and Spain.⁹¹ All five captive breeding programs are for birds of the falcon species.⁹² The US also has CITES registered captive breeding operations for falcons.⁹³ This is minor compared to countries like South Africa where captive breeding is so pervasive such that iconic species like lions and cheetahs are bred in farms. The government of South Africa recently amended the Animal Improvement Act of South Africa which governs livestock breeding and listed wild species including lions, cheetahs, rhinos and zebras as farm animals.⁹⁴

It is progressive for the EU to implement prohibitive regulations for a few more species in addition to those covered under CITES. The extent of trade in non-CITES listed or non-EU listed species destined for the European and North American markets is unknown. A lacuna in law exists for the protection of such unlisted species that have been illegally obtained from their range states. Trade in such species is not prohibited within the EU, laying bare the need for regional or national laws that prohibit sale of species listed or unlisted that have been illegally acquired in their country of origin. For instance, Mt. Kenya bush vipers and Kenya horned vipers were available for sale in Europe, China, US, and Mexico in pet shops and online forums for as much as €4000 despite the two species being categorised as vulnerable and under special protection by Kenya Wildlife laws.⁹⁵ The vipers were often smuggled into Europe, China, and Mexico where they did not enjoy any protection by virtue of not being listed under any of the CITES appendices or EU annexes. The two species were also sold in the US illegal wildlife market. At the CITES 17th Conference of Parties (CoP 17) meeting in Johannesburg in 2016, Kenya's proposal to list the two species under Appendix II was accepted and the two species currently receive international protection.⁹⁶

CITES Conference of Party meetings where decisions to list, uplist, or delist species onto the various CITES appendices take place triennially.⁹⁷ Therefore, any changes to the CITES appendices or EU annexes that contain CITES listed species will only transpire after three years,⁹⁸ while any EU unilateral listings of species not included in CITES appendices takes at least a year.⁹⁹ Such a lengthy lull before decision making could lead to decimation of populations and shows how international laws are not able to respond swiftly enough to emerging situations. One attempt to be more responsive are the EU suspension regulations provisions that empower the EU commission to restrict any introduction of a species listed in annex A and annex B into the European Union, even if trade is allowed under CITES.¹⁰⁰

A decision to suspend introduction of a species into the EU is arrived at when the Scientific Review Committee, in consultation with the range states of the species in question, enters a negative opinion on the importation of a species. The negative opinion means that an import permit cannot be issued from the particular range state. The negative opinion is arrived at if importation is deemed to have a harmful effect on the conservation status of the species but is temporary and can be lifted if information on status of the species in the country of concern satisfactorily addresses concerns raised. Long term suspension of import of species is also possible through use of a suspension regulation where the range state in question has not provided information proving that trade in the species has no harmful effect on its conservation status. The Scientific Review Committee meets four times a year to make such decisions, among others. This mechanism allows the EU to react in a timely manner to changing conservation needs.

B. US REGULATIONS AGAINST ILLEGAL WILDLIFE TRADE.

1. ENDANGERED SPECIES ACT

The Endangered Species Act (“ESA”) was passed in 1973 and predates CITES which was opened for signature in 1973 and entered into force in 1975.¹⁰¹ The fundamental purpose of the ESA is to rehabilitate endangered or threatened species and by extension their habitats, to the point where they are fully recovered.¹⁰² The ESA is also the national implementing law of the CITES convention in the US and prohibits any trade of species in contravention of CITES provisions.¹⁰³ The US is designated as a category 1 country by CITES due to its legislation that is believed generally to meet the requirements for implementation of CITES.¹⁰⁴

The ESA lists species in two main categories identified as endangered and threatened as opposed to the 4 annexes in the EU regulations. Endangered species are defined as species that are in real danger of extinction throughout all or significant portion of its range while threatened species are those that are likely to become endangered in the near future.¹⁰⁵ A category of candidate species exists which generally includes species that are of concern and are either precluded from being listed due to other higher priority species or more information is required before they can be proposed for listing. The ESA permits for emergency listing of a species in response to a situation that suddenly poses a significant risk to well-being of a species.¹⁰⁶ This provides the ESA with a mechanism for rapid reaction to species conservation emergencies that is lacking in both the EU wildlife trade regulations and CITES.

Another distinguishing aspect of the ESA is the level of public participation involved in the listing or rulemaking process. Apart from the U.S. Fish and Wildlife Service and National Marine Fisheries Service (“NMFS”), which are the ESA implementing agencies, citizens and organisations are allowed to petition for a species to be listed.¹⁰⁷ The listing process also accepts participation from the public through comments and consultations. Such public participation on a micro level differs from the

macro level of participation at the EU where only governments vote on listing decisions.

The ESA federal lists of threatened and endangered animals and plants also contains species that are not listed under CITES or the EU annexes like the Large fruited sand verbenas (*Abronia macrocarpa*),¹⁰⁸ African wild dog (*Lycaon pictus*),¹⁰⁹ *Abutilon eremitopetalum* (no common name)¹¹⁰ and egirdir or cicek minnow (*Pseudophoxinus handlirschi*).¹¹¹ The Ethiopian wolf also known as simien fox (*Canis simensis*)¹¹² and the Iriomote cat (*Prionailurus bengalensis iriomotensis*)¹¹³ are listed as endangered under ESA just like in the EU annex¹¹⁴ but missing in the CITES appendices.¹¹⁵ A species like the Asiatic black bear (*Ursus thibetanus*) is listed in appendix I of CITES,¹¹⁶ but is not listed under the ESA. The U.S. Fish and Wildlife Service Office of Law Enforcement also adopts periodic strategic plans, the most recent being a strategic plan for the period 2016–2020 for the enforcement of wildlife laws.¹¹⁷ The plan sets out its strategies for climate change, combating illegal wildlife trade, energy development, and conservation.

2. LACEY ACT

The Lacey Act¹¹⁸ is an innovative and robust piece of legislation that aims to conserve the environment through outlawing illegal wildlife trade of species or specimens that have been obtained, possessed, or transported in contravention of either US domestic laws or foreign laws.¹¹⁹ The act is an effective framework that enables the enforcement of existing wildlife laws, especially through preventing plants, timber, fish, and animals that have been illegally acquired from foreign countries from being laundered into the US market.

The act itself does not designate a specific implementing agency and can thus be used by any of the enforcement agencies hence making it a tool that is widely available to US agencies. The effectiveness of this law is best illustrated by the *United States v. Bengis*.¹²⁰ In this case, the three accused persons had been illegally harvesting excess quantities of rock lobsters in South Africa and exporting them to the US for over a decade. The three accused were sentenced to 46 months, 30 months, and 12 months respectively, and ordered to pay \$22.4 million in restitution to South Africa. The Act does distinguish between unknowingly engaging in prohibited conduct and knowingly engaging in prohibited conduct, with the latter considered criminal conduct attracting jail terms, fines, and orders of forfeiture.¹²¹ Each violation of the Act is considered a separate offense and can attract a separate fine.¹²²

3. MISCELLANEOUS WILDLIFE LAWS AND REGULATIONS.

The US has a notable compendium of laws that targets conservation and protection of different species across the globe. These laws include:

Natural Resources Act of 2019—Passed by the US Senate in March 2019. Title VII, Sec 7001 contains provisions to help conserve endangered species like turtles, elephants, and tigers. The legislation also authorises cash-prize competitions for technological innovations in the prevention of illegal poaching

and trafficking through the Theodore Roosevelt genius prize for prevention of wildlife poaching and trafficking.¹²³

The Eliminate, Neutralize, and Disrupt (END) Wildlife Trafficking Act of 2016—This legislation establishes the Task Force on Wildlife Trafficking (Task Force), co-chaired by the Secretary of State, the Secretary of the Interior, and the Attorney General and brings together 17 federal departments and agencies to implement the National Strategy for Combating Wildlife. The task forces objectives are to strengthen law enforcement, reduce demand, and build international cooperation. The legislation provides for deploying of attachés in strategic geographical wildlife trafficking hotspots like Nairobi, Beijing, and Bangkok to help fight wildlife trafficking. US law enforcement officers also offer investigative support, training, and forensic support to the local enforcement agencies where they are located.¹²⁴

Rescuing Animals with Rewards Act of 2019 (RAWR Act)—The Act amends the international whistle-blower rewards program to include wildlife trafficking.¹²⁵

Presidential executive orders—Executive orders have also been well deployed in the US to fight wildlife crime. Most recently President Trump issued Executive Order 13773 calling for a comprehensive and decisive approach to dismantle organized crime syndicates. The order also recognizes the specific connection between wildlife trafficking and transnational organized criminal networks.¹²⁶ President Barack Obama also issued Executive order 13648 in July 2013 to support the fight against wildlife trafficking.¹²⁷

Other laws used for conservation include African Elephant Conservation Act, Asian Elephant Conservation Act, Rhinoceros and Tiger Conservation Act, Great Ape Conservation Act and Marine Turtle Conservation Act, and Big Cat Public Safety Act all of which dedicate considerable amounts of funding for anti-wildlife trafficking projects, training of conservation personnel in different areas, grants for conservation organisations, and actual on-site conservation and rehabilitation projects.

V. PENALTIES AND SENTENCING

The majority of penalties prescribed by law in both Europe and the US are not deterrent enough when weighed against the severity of wildlife crime and the fact that both regions are active transit and market destinations of illegal wildlife species. IWT puts the community, including the environment, at risk and deterrent sentences contribute towards reducing the future risk of similar crimes and recidivism.

A. EU PENALTIES AND SENTENCING

EU regulations criminalise activities like the purchase, offer to purchase, sale, and offer to sell of wildlife species or specimens among others. Even with the wildlife trade regulations being directly applicable to all member states, implementing national legislation to enforce issues like penalties and sentencing remains under the sovereignty of each member state. The

penalties, maximum fines, and sentencing approaches within the EU vary dramatically. The maximum sentences are rarely meted out, thus highlighting the need for regional recommendations¹²⁸ on sentencing guidelines to harmonize how wildlife crimes are handled across the EU.¹²⁹ Since surveillance, investigation, and prosecution efforts have been intensified, sentencing appears to be the weak link in the fight against wildlife crime.

Lenient sentences that are disproportionate to the harm caused are not uncommon within the EU justice system. For instance, on 3rd November 2019 in Portsmouth, Chao Xi was sentenced to 1 years imprisonment suspended for two years for the illegal sale and export of elephant ivory from the UK under the Control of Trade in Endangered Species (Enforcement) Regulations 1997 and Customs and Excise Management Act 1979.¹³⁰ Slawomir Kazmierczak was sentenced to nine months in prison after pleading guilty to nine charges which included trading in prohibited ivory under the Control of Trade in Endangered Species (Enforcement) Regulations 1997.¹³¹ In Germany the Federal Nature Protection Act (Bundesnaturschutzgesetz) sets a maximum penalty of five years for illegal wildlife trade related offences.¹³² In Spain, article 332 of the Criminal Code prescribes for a person convicted of trafficking in protected species of wild flora with a penalty of imprisonment of between six months to two years and a fine of eight to twenty-four months and disqualification from participating in a trade or profession for a duration of between six months to two years.¹³³

Ancillary laws like laws against organised crime have been effectively used to augment prosecution of wildlife crime. They are considered aggravating factors during sentencing or attract additional penalties. In Sweden, smuggling violations are aggravating factors that increase a wildlife sentence to six years as opposed to the two years provided in the Swedish Environmental code. The Endangered Species Act of the US also provides for civil penalties of up to \$25,000¹³⁴ for each violation in addition to criminal penalties.¹³⁵

B. US PENALTIES AND SENTENCING

In comparison to Europe, the US seems to make more use of ancillary laws to prosecute wildlife offenders. Penalties as well as sentences issued appear more severe than those in Europe. For instance, despite pleading guilty, Zhifei Li who was charged with selling 30 smuggled, raw rhino horns worth roughly \$3 million to factories in China was sentenced to 70 months in prison over and above forfeiting \$3.5 million which were proceeds of the crime.¹³⁶ In a case of illegally importing and trafficking narwhal tusks and associated money laundering offenses, Andrew Zauskas was sentenced to 33 months in prison. He was also ordered to pay a fine of \$7,500, forfeit \$85,089 and six narwhal tusks, besides a three-year period of supervision after release.¹³⁷

However, lenient sentences are still imposed like in a 2019 case where Richard Sheridan, an Irish national and member of the Rathkeale Rovers gang was extradited to the US in August 2019 and charged with trafficking of a rhino horn. He was sentenced to a term of 14 months in prison and two years of supervised release.¹³⁸ Both the EU and US penalties nevertheless pale

in comparison to the severe penalties enacted in some of the most affected range states endowed with keystone endangered species. For instance, in Namibia, the illegal hunting of elephant or rhino attracts a fine of up to \$1.7 million or up to 25 years imprisonment.¹³⁹ In Kenya, manufacturing an item from an animal trophy of an endangered like species attracts a minimum fine of \$100,000 or and a maximum of life in prison.¹⁴⁰

VI. RECOMMENDATIONS

INTERNATIONAL LACEY LAW

An international law that takes the form of the Lacey Act to the extent that it would prohibit laundering, trafficking or illegal taking of wildlife in one country for sale in another country can significantly help fight IWT. Species that are not protected in any of CITES, EU, or US lists would particularly benefit from such protection where they have been illegally taken. This could be achieved by regional integration bodies like the EU enacting such a Lacey regulation, by a global version of the Lacey Act being enacted in the form of an international convention or protocol to fight international wildlife crime, the less likely and politically drawn-out process of countries enacting domestic laws similar to the Lacey Act or amendments to domestic laws of individual countries to include provisions similar to those of the Lacey Act. Those measures would ensure that the perpetrators of wildlife crimes, especially crimes involving species that may not be protected under CITES, EU or US lists would still face prosecution, sanctions as well confiscation of illegal specimens in the destination or market country.

MAKE MORE USE OF ANCILLARY LAWS TO FIGHT INTERNATIONAL WILDLIFE CRIME

More ancillary laws that could be applied to wildlife offenses ought to be used both in the EU and the US. EU member states could make use of organized crime offences as additional charges to be levelled against accused persons. In the US, the Racketeer Influenced and Corrupt Organizations (“RICO”) Act,¹⁴¹ which was enacted by the US Congress with the declared purpose of seeking to eradicate organized crime, could be applied to wildlife trafficking crimes. Applying the RICO Act to wildlife offenses which are increasingly committed by organised criminal groups may assist to substantially improve prosecution or provide an additional tool for prosecutors to use. A person is in violation of the RICO Act if they participate in a pattern of racketeering activity through some form of business or enterprise designed to earn money via illegal means. A number of offenses, usually referred to as predicate offenses under the RICO act constitute racketeering. Such offenses include money laundering, bribery, kidnapping, murder, forgery, obstruction of justice and drug dealing among others. For charges to be preferred under the RICO act a certain threshold must be met which is that at least two predicate crimes must have been committed within 10 years through the business or enterprise.

UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME (UNTOC)

The UNTOC is an adaptive convention. This means that UNTOC can be used to address new and emerging forms of crime, if member States Parties have the will to apply it in their criminal practice. Source, transit or destination countries of illegal wildlife trade that are State Parties to the UNTOC have the opportunity of amending their domestic laws to ensure that wildlife trafficking fits within the description of a serious crime as defined by the UNTOC. Once this UNTOC definition is met, adequate and effective means of international cooperation in investigation and prosecution can be unlocked. The UNTOC only applies to the prevention, investigation and prosecution of serious crimes¹⁴² that are transnational in nature and involves an organized criminal group.¹⁴³ Serious crimes are defined as offences punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.¹⁴⁴ An alternative means would be to enact a wildlife crime protocol under the UNTOC, to add to already existing protocols of the UNTOC that focus on specific transnational crimes like human trafficking and illicit arms trafficking.

STIFFER PENALTIES FOR WILDLIFE DEALERS AND TRAFFICKERS

Stringent penalties are not the panacea to IWT and may not, by themselves, necessarily alter the mind-sets of persons who engage in wildlife crimes, to help them comprehend the far-reaching effects of IWT. Be that as it may, strong penalties will always act as a deterrent or as punitive measure to those who remain undeterred by other measures or educational initiatives and engage in wildlife crime.

IMPLEMENT A FULL BAN ON THE SALE OF IVORY

There is need for a total ban on sale of ivory. Ivory is often laundered and mixed with legitimately sold ivory and differentiating the exact source of each piece of ivory is currently not practical. A moratorium for a number of years will halt all ivory trade and allow for the species to recover.

VII. CONCLUSION

Both the EU and US have significantly contributed to the fight against illegal wildlife trade worldwide though they remain the largest exporters and importers of wildlife specimens in general. The danger of species decimation or extinction is still alive and there is need for further reforms and funding towards prosecution and law enforcement to realize further reduction of wildlife crime. Eventually, conservation and protection of biodiversity rests with appreciating the interdependent relationship humanity enjoys with the environment and understanding the role that humans must play to safeguard it.

